The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

February 19, 2025
SPR25/0486

Jonathan Gerhardson
VIA EMAIL
MA

Dear Mr. Gerhardson:

I have received your letter appealing the response of the University of Massachusetts Amherst Police Department to your request for records.

I have directed a member of my staff, Thomas Lynn, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Manza Arthur
Supervisor of Records

cc: Ian Cyr

Dennis, Dylan (SEC)

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Tuesday, February 18, 2025 5:47 PM
To: Ian Cyr
Cc: Chan, Benjamin (SEC); SEC-DL-PREWEB
Subject: Re: Determination - SPR25/0273

Hello,

I have reviewed this document and am renewing my appeal to the Supervisor of Records.

First, it is not clear to me that the record provided is the same one that I requested. A report from the law firm Prince Lobel, which references the record I seek, says that "the UMPD's basic Operational Plan for May 7 was the very document it created on April 29, with the date and a few other details changed" (p.7). This implies that in addition to the April 29 plan, there is an seperate May 7 plan, and I would hope, a corresponding record of that plan, which I believe to be responsive to my request.

Previously, UMPD attempted to withhold the entire record from disclosure under exemption (n) of the Public Records law. While no specific exemption was cited for the redactions made in the document produced, nor was any explanation offered about why these exemptions are applicable, I will assume UMPD believed that exemption (n) applies to the redactions.

Exemption (n) applies to:

> *records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security*

While the document titled "OPERATIONAL PLAN / Plan#24-03 /Protest Encampment / Event Date: 4/30/2024" probably falls under the category of a threat or vulnerability assessment record, UMPD has not provided sufficient factual heft to support its (presumptive) claim that the full disclosure of this record, and/or its May 7 counterpart, " is
likely to jeopardize public safety or cyber security."

Furthermore, I would argue that disclosure is exceedingly unlikely to jeopardize public safety because the records in question relate to specific circumstances from almost a year ago. As is noted in the above referenced report, UMPD found it necessary to change the details of their operation between April 29 and May 7, just one week. Given the ephemeral nature of these documents, it is difficult to imagine what parts of the redacted information could possibly still be exempt under (n). For this reason I object to redactions on pages 5-6, 10-13, 15-16.

With that said, I am empathetic to the concerns of Chief Cyr, who is responsible for ensuring the safety of the UMPD officers who keep the UMass Amherst campus safe. For this reason, although I do not believe there is any legal reason they can be withheld, I do not object to the redaction of the items in the "Name" column of the table on pages 15-16.

Thank you.

Best,
Jonathan Gerhardson

On Tue, Feb 18, 2025 at 3:45 PM Ian Cyr <ipc@umass.edu> wrote:

> Good Afternoon,
>
> Please find a redacted copy of the responsive record.
>
> Thank you.
>
> Ian P. Cyr
>
> Deputy Chief
>
> University of Massachusetts Police
>
> 585 East Pleasant St.
>
> Amherst, MA. 01003
>
> 413-545-2121
>
> FBINA#234
>
> ---
>
> **From:** Chan, Benjamin (SEC) <Benjamin.Chan@sec.state.ma.us>
> **Sent:** Thursday, February 6, 2025 4:41 PM
> **To:** Ian Cyr <ipc@umass.edu>
> **Cc:** SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; Jon Gerhardson <jon.gerhardson@gmail.com>
> **Subject:** Determination - SPR25/0273
>
> You don't often get email from benjamin.chan@sec.state.ma.us. Learn why this is important

Good Afternoon,

Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This determination is attached and available online at: http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Very Respectfully,

Benjamin

Benjamin Chan (he/him/his)

Senior Legal Clerk

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA 02108

617-727-2832

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

February 6, 2025
SPR25/0273

Ian P. Cyr
Deputy Chief
University of Massachusetts Police Department
585 East Pleasant Street
Amherst, MA 01003

Dear Deputy Chief Cyr:

I have received the petition of Jonathan Gerhardson appealing the response of the University of Massachusetts Police Department (Department) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 17, 2025, Mr. Gerhardson requested, "a copy of a UMPD plan which is referenced in the report."

On January 29, 2025, the Department provided a response, withholding the responsive record under Exemption (n) of the Public Records Law. Unsatisfied with the response, Mr. Gerhardson petitioned this office and this appeal, SPR25/0273, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be

provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

Current Appeal

In his appeal, Mr. Gerhardson states, "as described in the Prince-Nobel report released by UMass, it is not even clear that the requested record is an active policy as Mr. Cyr describes it, but one specifically related to an event seven months ago. In either case, I do not believe that UMPD can legally withhold this document entirely."

The Department's January 29th Response

In its January 29, 2025 response, the Department cited Exemption (n) of the Public Records Law to withhold the responsive record.

Exemption (n)

Exemption (n) permits the withholding of:

> records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

G. L. c. 4, § 7(26)(n).

Exemption (n) allows for the withholding of certain records which if released would jeopardize public safety. The first prong of Exemption (n) examines "whether, and to what degree, the record sought resembles the records listed as examples in the statute;" specifically, the "inquiry is whether, and to what degree, the record is one a terrorist would find useful to maximize damage." PETA, 477 Mass. at 289-90.

The second prong of Exemption (n) examines "the factual and contextual support for the proposition that disclosure of the record is 'likely to jeopardize public safety.'" Id. at 289-90. The PETA decision further provides that "[because the records custodian must exercise 'reasonable judgment' in making that determination, the primary focus on review is whether the custodian has provided sufficient factual heft for the supervisor of public records or the reviewing court to conclude that a reasonable person would agree with the custodian's determination given the context of the particular case." Id.

PETA also provides that "[t]hese two prongs of exemption (n) must be analyzed together, because there is an inverse correlation between them. That is, the more the record sought resembles the records enumerated in exemption (n), the lower the custodian's burden in demonstrating 'reasonable judgment' and vice versa." PETA at 290.

In its January 29, 2025 response, the Department states:

> The record requested is an 'Operations Plan' developed by the UMPD and it contains specific information related to the effective deployment of police and medical resources to a protest demonstration. This information describes the operational objectives, staffing, intelligence gathering processes, equipment, staging and deployment locations of police and medical personnel, and the medical and tactical plans of those resources to include perimeter locations and traffic control points. These security measures are specifically designed to support the safe, and effective response to this specific situation and ensures that the university maintain its public safety and emergency preparedness posture.
>
> The requested document resembles the records listed as examples in the statute, and the requested document meets the first prong of Exemption (n) as the requested document is defined under the law as a plan, or procedures which relate to security measures, emergency preparedness, threat or vulnerability assessments, relating to the security or safety of persons or buildings, structures.
>
> Furthermore, the disclosure of the document undermines public safety as it relates to security measures and emergency preparedness. The information in the document details how police and medical responders are addressing matters of public safety, and providing security for all of those persons involved. The disclosure of this information could be used by someone with intent to inflict harm against those participants, and responders. It was only three weeks ago where a lone individual, with terrorist intent, usurped security protocols to use a vehicle to ram into a pedestrian filled street, killing and injuring numerous people.

Although portions of the record may fall under Exemption (n), it is unclear why the record may be withheld in its entirety. It should be noted that any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). See Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are narrowly construed and are not blanket in nature). The Department must clarify whether segregable portions can be provided.

Conclusion

Accordingly, the Department is ordered to provide Mr. Gerhardson with a response to his request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at

pre@sec.state.ma.us. Mr. Gerhardson may appeal the substantive nature of the Department's response within ninety days. See 950 C.M.R. 32.08(1).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Jonathan Gerhardson

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

January 29, 2025
SPR25/0273

Jonathan Gerhardson
VIA EMAIL
MA

Dear Mr. Gerhardson:

I have received your letter appealing the response of the University of Massachusetts Amherst Police Department to your request for records.

I have directed a member of my staff, Thomas Lynn, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Manza Arthur
Supervisor of Records

cc: Ian Cyr

Dennis, Dylan (SEC)

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Wednesday, January 29, 2025 4:05 PM
To: SEC-DL-PREWEB; Ian Cyr
Subject: Fwd: seeking April 29 UMPD plan from Prince Lobel report
Attachments: LetterRecordsExemption N_UMPD_Gerhardson.pdf

Hello,

I am requesting appeal on this response. The university previously tried to withhold a document using the same logic and after an in-camera review your office concluded they could not do this.

Furthermore, as described in the Prince-Nobel report released by UMass, it is not even clear that the requested record is an active policy as Mr. Cyr describes it, but one specifically related to an event seven months ago.

In either case, I do not believe that UMPD can legally withhold this document entirely. Can they redact portions of it? I'd prefer not, but probably.

Best,
Jonathan Gerhardson

---------- Forwarded message ---------
From: **Ian Cyr** <ipc@umass.edu>
Date: Wed, Jan 29, 2025 at 3:51 PM
Subject: RE: seeking April 29 UMPD plan from Prince Lobel report
To: Jon Gerhardson <jon.gerhardson@gmail.com>
Cc: UMPD Records Request <recordsrequest@umass.edu>

Hello Jon,

I apologize for my delay in responding, please find the attached.

Best,

ian

Ian P. Cyr

Deputy Chief

University of Massachusetts Police

585 East Pleasant St.

Amherst, MA. 01003

413-545-2121

FBINA#234

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Friday, January 17, 2025 4:52 PM
To: Ian Cyr <ipc@umass.edu>
Cc: UMPD Records Request <recordsrequest@umass.edu>
Subject: Re: seeking April 29 UMPD plan from Prince Lobel report

Okay thanks, you as well

On Fri, Jan 17, 2025, 4:46 PM Ian Cyr <ipc@umass.edu> wrote:

> Hi Jon,
>
> Received, I am working on the response and will send that out within the 10-day window for public record requests.
>
> Enjoy the weekend.
>
> -Ian
>
> Ian P. Cyr
>
> Deputy Chief
>
> University of Massachusetts Police
>
> 585 East Pleasant St.
>
> Amherst, MA. 01003
>
> 413-545-2121

FBINA#234

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Friday, January 17, 2025 9:21 AM
To: Ian Cyr <ipc@umass.edu>
Subject: seeking April 29 UMPD plan from Prince Lobel report

Ian,

I'm reading that report that went out to campus members yesterday, and would like to request a copy of a UMPD plan which is referenced in the report.

> While the Administration may have been caught off guard by the May 7 Encampment, it was not caught without a plan. That plan was the one developed by UMPD on April 29. It anticipated the removal of encampment structures – in the first instance, with the cooperation of the protesters; but, if necessary, and as occurred here, by UMPD and members of the State Police.

Bottom of page 1 if you have not seen it.

Please and thanks. Non-commercial.

Best,

Jonathan Gerhardson

University of Massachusetts Amherst

Student Affairs & Campus Life
University of Massachusetts
Police Department

January 29, 2025
Jon Gerhardson
jon.gerhardson@gmail.com
RE: Public Records Request dated January 17, 2024
Response of Records Access Officer

Dear Mr. Gerhardson:

On January 17, 2025, we received your request pursuant to the Massachusetts Public Records Law for the following records:

• "I'm reading that report that went out to campus members yesterday, and would like to request a copy of a UMPD plan which is referenced in the report.

> While the Administration may have been caught off guard by the May 7 Encampment, it was not caught without a plan. That plan was the one developed by UMPD on April 29. It anticipated the removal of encampment structures – in the first instance, with the cooperation of the protesters; but, if necessary, and as occurred here, by UMPD and members of the State Police."

The Department intends to withhold the above-referenced requested records due to the applicability of the following exemptions and the reasons set forth below:

1. Exemption (n): This exemption applies to "records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety and cyber security."

   In particular, this exemption is intended to secure the safety of persons and public places by restricting access to records that may have been previously open to public inspection. The nature of the exemption requires a records custodian to make some value judgment regarding the requester in order to decide whether to release the information sought. Pursuant to the decision of the Supreme Judicial Court in People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280 (2017) exemption (n) is to be construed using the following two prongs: (1) whether, and to what degree, the record is one a terrorist would find useful to maximize damage, and in that sense, jeopardize public safety; and (2) Whether the

custodian has provided sufficient factual heft for the supervisor of public records or the reviewing court to conclude that a reasonable person would agree with the custodian's determination given the context of the particular case. These prongs must be considered together due to the inverse correlation between them.

You have advised that you are requesting these records because they are referenced in a report recently released by the University.

The record requested is an "Operations Plan" developed by the UMPD and it contains specific information related to the effective deployment of police and medical resources to a protest demonstration. This information describes the operational objectives, staffing, intelligence gathering processes, equipment, staging and deployment locations of police and medical personnel, and the medical and tactical plans of those resources to include perimeter locations and traffic control points. These security measures are specifically designed to support the safe, and effective response to this specific situation and ensures that the university maintain its public safety and emergency preparedness posture.

The requested document resembles the records listed as examples in the statute, and the requested document meets the first prong of Exemption (n) as the requested document is defined under the law as a plan, or procedures which relate to security measures, emergency preparedness, threat or vulnerability assessments, relating to the security or safety of persons or buildings, structures.

Furthermore, the disclosure of the document undermines public safety as it relates to security measures and emergency preparedness. The information in the document details how police and medical responders are addressing matters of public safety, and providing security for all of those persons involved. The disclosure of this information could be used by someone with intent to inflict harm against those participants, and responders. It was only three weeks ago where a lone individual, with terrorist intent, usurped security protocols to use a vehicle to ram into a pedestrian filled street, killing and injuring numerous people.

While I respect the position that our records are presumed public, I must exercise reasonable judgement to deny your request and withhold the document.

Thank you,

Ian Cyr
Deputy Chief/RAO